

Message

From: Robin, George [Robin.George@epa.gov]
Sent: 2/26/2013 10:08:58 PM
To: Albright, David [Albright.David@epa.gov]
Subject: FW: (Aquifer Exemption Regs) § 144.7 Identification of USDWs and exempted aquifers and § 146.4 Criteria for exempted aquifers

fyi, for future reference as this will come up again

From: Robin, George
Sent: Tuesday, February 26, 2013 11:05 AM
To: Dermer, Michele
Subject: (Aquifer Exemption Regs) § 144.7 Identification of USDWs and exempted aquifers and § 146.4 Criteria for exempted aquifers

Michele,

I copied these regs before going into the Cat Canyon application in order to determine how I will go about the review.

It seems that 144.7 makes it clear that the Aq. Ex. review is not like a permit's Tech Review.

If there are substantial pieces of information that are missing, such that the application is deemed insufficient, then that application must be denied.... with reasons given... per those regs.

My guess is that the process must be conducted again per our instructions. I am thinking that our instructions could for instance mention whether or not the required supplemental information is sufficient to trigger another Public Comment process. If Public Comment is not necessary, then we might accept the DOGGR submitting the newly completed package and another 45-day period begins upon EPA's receipt.

Let's discuss.

George

§ 144.7 Identification of underground sources of drinking water and exempted aquifers.

(a) The Director may identify (by narrative description, illustrations, maps, or other means) and shall protect, except where exempted under paragraph (b) of this section, as an underground source of drinking water, all aquifers or parts of aquifers which meet the definition of an "underground source of drinking water" in § 144.3. Even if an aquifer has not been specifically identified by the Director, it is an

underground source of drinking water if it meets the definition in § 144.3.

(b)(1) The Director may **identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof** which the Director proposes to designate as exempted aquifers using the criteria in 40 CFR 146.04.

(2) No designation of an exempted aquifer submitted as part of a UIC Program shall be final until approved by the Administrator as part of a UIC program.

(3) Subsequent to program approval or promulgation, the Director may, after notice and opportunity for a public hearing, identify additional exempted aquifers. For approved State programs exemption of aquifers identified

(i) under § 146.04(b) shall be treated as a program revision under § 145.32; (ii) under § 146.04(c) shall become final if the State Director **submits the exemption** in writing to the Administrator and the Administrator **has not disapproved** the designation within 45 days. **Any disapproval by the Administrator shall state the reasons and shall constitute final Agency action for purposes of judicial review.**

(c)(1) For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under § 146.04(b)(1) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by § 144.31(g).

(2) For Class II wells, a **demonstration of commercial producibility** shall be made as follows:

- (i) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of **historical production** having occurred in the project area or field.
- (ii) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, **information such as** logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

§ 146.4 Criteria for exempted aquifers

An aquifer or a portion thereof which meets the criteria for an “underground source of drinking water” in § 146.3 may be determined under 40 CFR 144.8 to be an “exempted aquifer” if it meets the following criteria:

- (a) It does not currently serve as a source of drinking water; and
- (b) **It cannot now and will not in the future serve as a source of drinking water because:**
 - (1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible.
 - (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;
 - (3) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or

(c) The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 47 FR 4998, Feb. 3, 1982; 48 FR 14293, Apr. 1, 1983]